

# LUKAS, NACE, GUTIERREZ & SACHS

CHARTERED

1650 TYSONS BOULEVARD, SUITE 1500  
MCLEAN, VIRGINIA 22102  
703 584 8678 • 703 584 8696 FAX

WWW.FCCLAW.COM

RUSSELL D. LUKAS  
DAVID L. NACE  
THOMAS GUTIERREZ\*  
ELIZABETH R. SACHS\*  
GEORGE L. LYON, JR.  
PAMELA L. GIST  
DAVID A. LAFURIA  
TODD SLAMOWITZ\*  
B. LYNN F. RATNAVALE\*  
STEVEN M. CHERNOFF\*  
KATHERINE PATSAS\*

CONSULTING ENGINEERS  
ALI KUZEHKANANI  
LEILA REZANAVAZ  
—  
OF COUNSEL  
LEONARD S. KOLSKY\*  
JOHN CIMKO\*  
J. K. HAGE III\*  
JOHN J. MCAVOY\*  
HON. GERALD S. MCGOWAN\*  
TAMARA DAVIS-BROWN\*

\*NOT ADMITTED IN VA  
Writer's Direct Dial  
(703) 584-8661  
[dnace@fcclaw.com](mailto:dnace@fcclaw.com)

February 20, 2008

## VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Room TW-B204  
Washington, DC 20554

**Re: Notice of Oral *Ex Parte* Communications:**

**AU Docket No. 07-157 – Auction of 700 MHz Band Licenses**

**Docket No. 05-265 - Reexamination of Roaming Obligations of CMRS Providers**

**WC Docket No. 05-337 – High Cost Universal Service Support for Competitive Eligible Telecommunications Carriers (“CETCs”)**

**PS Docket No. 07-287 – The Commercial Mobile Alert System**

**CC Docket No. 94-102 – Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems and Non-Initialized Phones**

Dear Madam Secretary:

In accordance with Section 1.1206 of the Commission’s rules, 47 C.F.R. Section 1.1206, we hereby provide you with notice of oral *ex parte* presentations in connection with the above-captioned proceedings. The presentations occurred on February 19, 2008 in a meeting with Commissioner Jonathan S. Adelstein and his Legal Advisor, Renee Crittendon, and in a separate meeting with Bruce Gottlieb, Legal Advisor to Commissioner Michael J. Copps.

Attending the meeting with Commissioner Adelstein and Ms. Crittendon behalf of the Rural Cellular Association ("RCA"), in addition to the undersigned, was Arthur L. Prest of Arthur L. Prest and Associates. The same RCA representatives were joined by Eric C. Peterson, Executive Director of RCA, for the meeting with Mr. Gottlieb. We discussed positions presented in RCA's comments in each docket and as supplemented below.

With reference to the 700 MHz Band auction, RCA notes that the reserve price for licenses in all Blocks other than the D-Block has been met as of the current round of Auction #73. Because there is likely to be a significant delay in a re-auction of the D-Block while the Commission considers alternatives, RCA asks that the Commission suspend the anti-collusion prohibition of Section 1.2105(c) as of the down payment deadline for Auction #73. In addition the Commission could dismiss all applications for Auction #76 and allow for re-filing of Auction #76 applications for the D-Block after new rules associated with the D-Block are adopted.

Pertaining to the automatic roaming proceeding, RCA asks the Commission to expand upon modifications to Section 20.12 of the Rules, adopted August 7, 2007, and require wireless carriers to provide automatic roaming as to data services at all levels, including 3G and higher, to other technologically compatible carriers on reasonable and non-discriminatory terms and conditions. The availability of data is of great importance to consumers and expansion of the rule will serve to promote competition among wireless carriers, to the direct benefit of the public.

Regarding the Universal Service Fund ("USF") proceeding, RCA strongly recommends against a cap on high cost USF support payable to Competitive Eligible Telecommunications Carriers ("CETCs"). A cap is unnecessary considering the marginal growth in high cost disbursements relative to the overall size of the fund and wireless carriers' contributions to the fund, and it would be counterproductive to the efforts of rural wireless carriers to extend and improve wireless services in rural areas. Further, if applied on a state-by-state basis, CETCs in various states where an insignificant amount of high cost support has been provided as of any arbitrarily selected cut-off date would be impacted in a discriminatory manner. If, however, there is a consensus among Commissioners to impose a cap, RCA requests that the amount of high cost support paid to each CETC be frozen (i.e., not subject to dilution) if new CETCs are designated in the state, provided that line counts reported by the CETC show no decrease in the number of lines served.

With regard to rules for a Commercial Mobile Alert System, we referred to the 2006 "SAFE Port Act" and, in particular, Title VI of that legislation known as the "Warning, Alert, and Response Network Act" otherwise known as the "WARN Act." Section 602(a) thereof requires the Federal Communications Commission to "... complete a proceeding to adopt relevant technical standards, protocols, procedures, and other technical requirements based on the recommendations of ... [the Commercial Mobile Service Alert] Advisory Committee necessary to enable commercial mobile service alerting capability for commercial mobile service providers that voluntarily elect to transmit emergency alerts" [emphasis added].

Art Prest was a member of the Advisory Committee and explained during the *ex parte* presentation that the Advisory Committee devoted a substantial amount of time and discussion to the issue of the level of geographic specificity for wireless emergency alerts. The Advisory Committee concluded that, at least at this time, due to technical feasibility limitations, it would not recommend that the FCC adopt standards for emergency alerts to be provided to areas smaller than counties. In addition, the Advisory Committee did not recommend that alerts be transmitted in multiple languages, taking note of capacity constraints on messages transmitted. RCA asks that the Commission recognize the statutory limitation on its authority to adopt rules in this matter and avoid adopting rules that require wireless service providers (who elect to transmit emergency alerts) to provide alerts to areas smaller in size than counties, or to provide alerts in languages other than English. Otherwise, many wireless service providers who might elect to participate in the program are not likely to participate and the purpose of the program -- to inform the public of emergencies through wireless devices -- will not be met.

Regarding fraudulent E911 calls from non-service initialized ("NSI") phones, RCA observed that a joint petition was recently filed by various entities, including the Tennessee Emergency Communications Board and several public safety organizations, asking that the Commission "...address this very serious issue by further considering the call-blocking option and other possible solutions to the problem."<sup>1</sup> RCA shares concern over fraudulent E911 calls which was a predictable result from the Commission's decision to require wireless carriers to transmit all wireless 911 calls without respect to their call validation process.<sup>2</sup> If the Commission elects to receive comments on the petition RCA suggests that the Commission include consideration of the formation of an advisory committee, similar to the group formed under provisions of the WARN Act. Representatives of communications service providers, including rural wireless carriers, should be among the advisory committee's members so that the experience and perspective of wireless carriers can be contributed to a review of the situation.

Sincerely,

*[filed electronically]*

David L. Nace

cc: Commissioner Jonathan S. Adelstein (via email)  
Renee Roland Crittendon (via email)  
Bruce Liang Gottlieb (via email)  
Best Copy and Printing, Inc. (by email)

---

<sup>1</sup> "Petition for a Notice of Inquiry Regarding 911 Call-Forwarding Requirements and Carriers' Blocking Options for Non-Initialized Phones" at page 14

<sup>2</sup> See §20.18(b) of FCC rules (47 C.F.R. §20.18(b))